

THE FUTURE OF CALLINGS—AN INTERDISCIPLINARY SUMMIT ON THE PUBLIC OBLIGATIONS OF PROFESSIONALS INTO THE NEXT MILLENNIUM:

WHAT IS THE SOURCE OF THE OBLIGATION OF PUBLIC SERVICE FOR THE PROFESSIONS?[†]

Remarks of Stephen L. Carter^{††}

It is good to be back here in Minnesota. Before I give what I describe as my neo-Kierkegaardian view of the professions with a dash of post-modern theology thrown in, I want to say that this is a tremendously useful conference. It is useful for professionals, by which I mean people who work in self-governing professions, to meditate from time to time on what it is that makes professions special. However, my remarks are going to take this conference in a slightly different direction than some of the issues raised this morning, because I have something of a contrary view about the role of professions—both the source and nature of the public obligation of professions.

I would suggest that it is actually not helpful to try to figure out what professions have in common. On the contrary, to figure out what they have in common constitutes a kind of dangerous leveling of groups that in important ways we ought to keep radically separate. In fact, it is even in some ways a little bit dangerous to think in terms of the ways that professions fit neatly into American society. One of the reasons I call my remarks neo-Kierkegaardian, is

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that I am not persuaded that professions should try to fit into American society.

Kierkegaard, as some of you know, wrote about Christianity several hundred years ago. He argued that Christians should never defend Christianity because it reduces Christianity to the status of something that needs defending. I feel the same way about professions for reasons I am going to explain.

In my remarks this afternoon, I would like to talk about three issues. First, the role of professions and why they are and should be in some ways radically separate from a society in which they exist. Second, the ways that professions often fail to be radically separate, that is, working too hard to fit in. Third, what ought to be happening instead. Although my remarks are of some general application, I am going to focus on three particular professions: clergy, lawyers, and journalists. Why these three? Because I am a parent of a household with two children of different ages. Why does that matter? Well if you are either a parent or have been a child, you know the characteristics of such a household. The parents play the part of the clergy—"thou shalt and thou shalt not!" The older child plays the part of the lawyer—"but you didn't ever say that the rule meant *that!*" And, the younger child plays the journalist—"oooooh, I'm going to tell!"

What is the source of the public obligation of the professions? The professions can only partly answer this question themselves. That is to say, you cannot draw the answer to this question entirely from the norms and the collective social and historical knowledge of the profession. On the contrary, I would like to draw the answer from important aspects of democracy. I will offer a conception of democracy and then try to explain how professions fit into that conception.

Democracy exists, in part, to solve an ancient and knotty problem. All through human history, we have had these things, these governments, these state apparatuses that have coercive power over individuals. Governments can tell people what to do and back that up with a sword or the gun. Individuals may or may not want to do what they are told to do. Even if these individuals decide they have to do what the government tells them to do, they often chafe under the rule of the state that orders them around.

Democracy exists, in part, as a device to persuade the governed that they have a stake in following the commands of the sovereign. They have a stake because they are part of what constitutes the sov-

ereign. They vote, but more important than voting, they are, in some theoretically formal sense, the government itself. Rather than a separation between the government and the people, we preach the people are the government. Of course that is not entirely true because majorities do not always rule, and, when they do rule, minorities often get very upset.

So how do you prevent any government, including a democracy, from simply being totalitarian, or from simply ordering people about with no possibility of appeal? One way is to split up your democracy and turn it into a republic that divides powers, and limits what government can do. That helps the people a little bit, but there is another solution equally important, and this is where the professions come in.

Ever since Alexis de Tocqueville visited America some 150 years ago, it has been a staple of American political theory, as well as a staple of the commentary on our government, that one of the things that makes America special is, as de Tocqueville said, “the plentitude of associations” or, as we now like to think of them—democratic intermediaries. An intermediary, in this usage, is an institution that is not controlled by the government and yet exists as an institution to which some people, but not all, owe voluntarily some form of allegiance. Moreover, the institution itself may have power in the community, and therefore becomes a power that the formal apparatus, the state, has to reckon with.

A classic example of an intermediary institution is a church. A church is neither established nor controlled by the government, and yet it exists as an entity to which people who voluntarily join it owe a kind of loyalty and allegiance. The government doesn’t control the flow of information among members of this institution. Why is this important? It is important because most of the modern democratic struggles have been about what life means and who gets to decide what life means. Whenever a state enacts a law, the state is saying this is a moral meaning that life has. This is a “thou shalt not,” backed up with the gun.

One of the powerful roles of intermediary institutions is to create a different set of meanings. Intermediary institutions can say, “We think life is about this,” no matter how many people think life is about something different. The tension between the intermediary institution that has one vision of life, and the state that has another, improves the quality of democracy by weakening the power of the state. The power is weakened because the members

of the intermediary institution are exposed to and often fully believe a different set of meanings than the one the state proposes.

This means that such intermediary institutions, even though they are an important function of democracy, are also in some sense always and everywhere the enemies of the state. I do not mean enemies in any sense of war. What I mean is that the state trying to come up with one set of meanings will try ceaselessly to co-opt the various intermediary institutions around it.

The classic example of this is the labor movement. In the late nineteenth and early twentieth centuries, the labor movement was an explicitly radical movement and posed a genuine challenge to capitalism. When it became regulated by the state, in the guise of being protected by the state, it became less radical. It gained a stake in the system and was co-opted. The co-optation, in this case, may not have been a bad thing. It was probably important to the survival of the unions, and it also improved the status of life in America in important ways. Nevertheless, you see the process. Once the unions became too powerful to be repressed, they were brought into the state rather than left to be independent setters of meaning floating around, potentially challenging the meanings the state wants to pursue.

What does this have to do with professions? The professions, at their best, act as important intermediary institutions. If a profession is going to think of itself as autonomous, it may be loyal to the state and believe in the state's institutions, but it is ultimately pursuing a set of meanings different from the state's. Moreover, professions are guided by a moral understanding that may be distinct from the moral understanding that guides the state.

When a profession behaves this way, like any other intermediary institution, it is engaging in what the post-modern theologians call, acts of resistance against the state. Resistance not in a sense that one is necessarily going out and taking over buildings, or something like that, but resistance in the sense that a profession says, "We have a different view of what is the good and how life is to be led than you do."

Let me give you examples from the three professions I mentioned. When lawyers defend unpopular clients or unpopular causes, they give effect to a different set of meanings than the meanings imposed, or attempted to be imposed, by a majority of their fellow citizens who might say, "That fellow is so wicked he deserves no defense," or "That cause is so awful, it deserves no de-

fense.” When lawyers insist that someone or something unpopular deserves a defense, they are saying that lawyers are guided by a different moral understanding. It is not that the society’s understanding is wicked, it is that lawyers, as a profession, are about a different task than others are and lawyers are guided by the requirements of that task.

Journalism, as a profession, is similar in many respects. When journalists, in the exercise of genuine news judgment, report stories that most Americans wish they would ignore, or leave to die, the journalists can also defend themselves by saying, “We are pursuing a different ethic. Our understanding of our role is different from the role that most Americans wish we would play. We are guided by an autonomous understanding, because that is what it means to be a profession even when that places us in opposition to most Americans.”

The clergy are a classic example of this proposition. When clergy preach things that most Americans do not like, and sometimes move people to public action and causes that most Americans do not like, they are playing the same role: intermediaries counseling resistance. What is more, they are saying, “We are guided by a separate and distinct moral understanding from the one that guides a majority of our fellow citizens. As an autonomous institution in society, we have an obligation to pursue the understanding we think is right, rather than the understanding you think is right.”

This has nothing to do with whether any particular person, including myself, likes the particular moral understanding that any profession is pursuing. Rather, one of the defining characteristics of a profession should be to pursue this kind of autonomy, which includes a moral understanding, that guides, in difficult moments, the activities of its members.

Today, many professions either lack such an autonomous understanding or are not guided by it. I think that lawyers are often so unpopular in America not so much because people don’t like the moral ethic that lawyers pursue, but rather, because people doubt whether lawyers in fact are pursuing a moral ethic. Lawyers do pursue a moral ethic, but it is misunderstood, even by lawyers.

Where do we get these professional ethics from? At the heart of any profession playing the role of democratic intermediary, is a moral principle, or set of moral principles, that are defensible—moral principles that the profession genuinely believes, if properly understood, people will admire (which has nothing do with admir-

ing what gets done in the name of the principle).

Again, take the example of clergy. A member of the clergy could say, "At the heart of my ethic is preaching and doing the will of God." Most Americans would probably say, "That is fine." There is a morally admirable professional ethic. It is possible for a particular member of the clergy to do and follow the will of God by pressing forward on a cause that most Americans abhor. But the question about the integrity of this professional ethic is not whether when acted upon it leads to actions that people like. Rather, it is whether the underlying moral principle is defensible, not whether everything done in pursuit of that principle is defensible.

One of the reasons it is important to have such a principle is that, without it, it is impossible for a profession to act with integrity. You cannot be true to a principle if you do not have a principle. If integrity means acting according to a principle—a morally admirable principle—even when there is risk in doing so, then one must first have a morally admirable principle. Before discussing what some morally admirable principles might be, let me suggest what some of them are not, for a seeming adherence to objectionable principles may be part of the reason that today we are seeing so much disrespect for so many professions around the nation.

Professions today are often contaminated by the competing principles offered by the rest of the world. In particular, materialism as a principle has polluted several understandings of professions. And so it is not at all absurd to suggest, for example, that the principle governing much of journalism as presented to the nation is the principle that one must gain an audience. There is nothing particularly admirable in that principle even though it is not surprising that it has attained a certain prominence in journalism at a time when market forms of language and market considerations have come to dominate so much of American life. Yet the very idea of having a profession that is radically autonomous from the rest of society, is that the members of that profession can, in effect, support one another in saying: "We have a different goal."

For clergy, all too often it appears that the governing ethic is to fill the seats without making a ruckus. Peter Berger, a sociologist, has been studying for years the ways in which the market desire to get people to come into the church or synagogue often trumps other aspects of the message as the clergy sends the message in order for the people to come in the door. Again, filling the seats is

not a morally admirable principle, although it is certainly a market driven principle.

With lawyers, the example of a principle which is not morally admirable is making money; that is, when making money appears to the public to be the goal of the profession rather than a by-product of the value of the skill. When making money becomes the goal, one does not have a morally admirable, defensible professional ethic.

Moreover, technocracy is never a morally admirable ethic. The technocratic ethic says, "I have a valuable skill, but will market to the highest bidder," and the language suggests a corollary—"Let me do the bidder's bidding." Markets often operate this way, but it is no business for a profession to be in. The claim of professions to autonomy rests crucially on the ability to identify an underlying ethic.

Consider the following example: a newspaper publishes a scandalous story about a local politician. The politician is very popular, and the community turns against the newspaper, not the politician. How is the newspaper to defend itself? It is not enough to say, "Well, we thought it would be a good story," nor, "We thought people would be interested." "We thought it would be a good story" just suggests that the goal is to gain an audience. "We thought people would be interested" is the moral version of the pornographer—give people what they want whether moral or not.

But Kierkegaard would say that the newspaper should not feel obliged to defend itself if it believes that what it is doing is morally admirable. Does it feel obliged to defend itself in reporting a scandalous story about a politician? That, Kierkegaard might say, reduces journalism to the status of a thing needing defense. For the newspaper to feel obliged to defend itself suggests a certain lack of confidence about the moral proposition actually guiding the exercise of precious First Amendment freedoms. That becomes very problematic, because if one half of the First Amendment is that it liberates journalism from state coercion, the other half has to be that journalists believe they are engaged in a morally valuable enterprise. If it is a morally valuable enterprise, it has to be describable in some terms other than "we thought it would good story," or "we thought people would be interested."

And, journalists should be the last people to offer as an explanation of their professional ethic the public's right to know. Journalists should never offer that ethic because it suggests that the mo-

tivating principle of the journalist is an assessment of something about the motivating principles of the public. That is a category mistake. The motivating principle of the journalist has to be something about the nature of journalism itself, or the relationship of journalism to democracy.

The principle of helping citizens to discover what they need to know to participate in self-governance, which is central to democracy, is an example of what might be a morally admirable journalistic principle. This suggests a connection to democracy, but it also includes the word *need*, which is to say that journalists then exercise actual news judgment, not market assessment, about what is actually needed by the public. And so, when a journalist discovers a scandalous story about a politician, or about anyone else including a fellow journalist, the question is not, "Will this make a good story?" or "Can I sell papers or air time better with this?" But rather, the question should be, "Is this something that I, in the exercise of my professional ethic, believe the public needs to know in order to perform the functions of self-governance?" If the answer is yes, the journalist reports the story and suffers the criticism, if any. If the answer is no, the journalist declines to report the story even if others are reporting it who have made different judgments.

When I say this to journalists, the answer I often get back is that it is unrealistic to think that it is possible to work this way because the competition will bury you if you leave out the scandalous stuff that others are reporting. But, if that is the answer, then journalists don't need the First Amendment, because the market provides breakfast cereal people want and automobiles people want, without any need for constitutional protection. There is no obvious reason why journalists need a First Amendment, if their only explanation of their function is we are giving people what they want. In the absence of First Amendment protection, the market will certainly allow journalists to do that! Consequently, the journalistic claim has to go not to what people want, but to what people need. Journalism's claim to autonomy in society must be aimed at allowing members of the profession to play this radical role of acting according to a different set of meanings than others do.

What about the clergy? Why is it so bad, you might ask, for members of the clergy to set a principle, even if an unwritten one, of having to fill the seats? After all, you might say, it is fine to preach the Word of God, but if nobody comes in the door, nobody is going to hear it. That is a terrible argument in theological terms,

but let's talk about it only in practical terms.

What roles do religions play in a democracy? Well, they play a lot of different roles. One role is that of creating communities of resistance and communities of different meanings. Religions have the opportunity to create these communities in ways that are far stronger in certain senses than other professions have. A number of members of the clergy are complaining about a sense of marginalization which some blame on the separation of church and state. If clergy are marginalized by something in society, it is the job of clergy to ignore that impediment in pursuit of the radical autonomy of their profession.

For example, if a member of the clergy believes there is an important moral message that the society has to know, the question of whether some people believe it appropriate or inappropriate for members of the clergy to preach morality in politics should be utterly irrelevant. This is because the members of the clergy, being radically autonomous by hypothesis, are not to be guided by what other members of society think. If Clergy A wants to impose God's will on the rest of the nation, and Clergy A thinks God wants that, then Clergy A has little choice but try to do that. If people don't like it, then Clergy A will lose. Clergy A should not be deterred by what other people think. If we believe that Clergy A should be deterred by what people would think, then we simply do not want the Civil Rights Movement ever to have taken place. Clergy have to take the view that their role in society, and their role in democracy, is to preach what they believe to be true whether it upsets people or not. If they believe that preaching what they believe to be true is not going to fill the seats, that just shows a lack of faith in their own role, and indeed, a lack of faith in their own faith.

This is sometimes a deeply problematic thing to do because there is another kind of marginalization. Not the marginalization that says, "I don't know if I'm allowed to do this in an democracy," but rather the marginalization that says, "Nobody is going to listen to me," or, "I will simply be ridiculed and lampooned as some sort of dangerous radical." One of my favorite theologians, Stanley Hauerwas, who teaches at Duke University, likes to say that clergy should look forward to being labeled dangerous radicals. The last thing that members of the clergy should want is people to think that they are just like everybody else. Quite the contrary, Hauerwas argues that if Clergy A thinks that he is just like everybody else, this suggests that faith is not making any difference in Clergy A's life.

Thus, the clergy, more than any other profession, should welcome society's labeling of them as radically different and out of step with what is going on. That is precisely where the churches ought to be—forever out of step; whether you think of the church as a few steps ahead, or a few steps behind. If the professional ethic is preaching the word of God, and doing it in the world without regard to consequences to oneself, then of course it is often going to be true that one will be preaching what gets a lot of people upset. If one preaches what gets people upset, that is simply a part of the job.

Indeed one of the worst things for preachers to do, is to try to make their congregations comfortable. My wife and I are Episcopalians. When we moved to New Haven about ten years ago, we asked a number of people what church we should attend. Almost invariably, the first question they asked us was whether we were liberals or conservatives—the idea being that if we were liberals we would like to go a liberal church to be told that God is a liberal and believes in all the same things we do, or if we were conservatives, to go to a conservative church and be told that God is a conservative and believes all the same things we do. The idea of a liberal or conservative church is a terribly disturbing one. The notion that a church should seek or embrace any sort of political affiliation is terrifying. Once a church becomes involved in identifying itself politically, whether with a political movement or a political party, it is already begun to lose the ability to stand radically apart from that society precisely because it is trying so hard to fit in. The Inquisition, someone once said, came about when the church gave up the power to die for its beliefs in exchange for the power to kill for its beliefs. The power to die for one's beliefs is part of being radically separate from society. The power to kill for one's beliefs is simply part of protecting the status quo, which is not the proper role of the church.

Now for the moment we have all been waiting for: Carter, heap some of your anathema on lawyers. Do not misunderstand me—the law is an admirable profession and an honorable one with a deeply moral ethic at its core. If I did not believe that, I would not be able to teach at a law school. I would not be able to encourage my students to go out and become lawyers. The law at its best is a helping profession, in much the same way that you can think of being a doctor or, in some of its aspects, being a member of the clergy as a helping profession. The law at its best involves the following para-

digm: people who have problems in their lives, and those people may be real individuals or juridical persons like corporations, come to the lawyer and lay the problem in the lawyer's lap and say, fix this. Lawyers, at their best, use the tools of their profession to try to fix problems. They see those who come to them with problems as individuals, humans, or corporations, or institutions, in need of assistance. Lawyers, at their worst, view those who come to them as profit centers—"How much money or how much publicity can I make from this?" The corruption of materialism in law is the deep love for those other aspects of the job.

The nature of law, especially as it is practiced in the United States, is that fame and fortune often do accompany highly skilled and highly able practitioners. There is nothing wrong with this. It is where one's deepest instincts lie that makes the difference. I propose the following as a possible morally admirable ethic to be the center of the legal profession: using the tools of the legal system to move the nation closer to the ideal of justice. You will notice that there is in this morally admirable ethic no mention of the client. There is no mention here, for example, of the lawyer's duty of zealous advocacy within the bounds of the law. That is because the service of clients is an epiphenomenon of the central principle, but it is not the principle itself. If one believes that giving clients what they want is the central principle, that is more simply a technocratic idea. It has no particular moral content, is not admirable or defensible, and therefore cannot serve as the governing ethic of a profession that wants to be radically autonomous.

You might say that lawyers do not want to be radically autonomous, but that is not true. The great tradition of lawyers in serving a variety of roles helps to show that it is not true. As a number of legal scholars have pointed out, for example, the principle law-givers in America, are neither courts nor legislatures, nor administrative agencies, but rather lawyers. This is because most people's principal experience with understanding their legal obligations, and their legal rights, is working with a lawyer. Whether it is a matter of buying a house, defending a lawsuit, or establishing a business, the lawyer becomes, in the life of that person, the law-giver. It is the lawyer who comes forward to say these are the possibilities of what you may do or what you may not do. Why does that matter? It matters because every lawyer has the role of counselor. Every lawyer has the opportunity in the counseling to do something beyond simply saying to a client, "Here are the options, you choose

among them.”

Thomas Schaffer, the great ethicist who teaches at the University of Notre Dame, tells the story of his days in the practice of law back in the early 1960s—before the Civil Rights Act of 1964 was adopted—when it was perfectly legal to discriminate in employment on the basis of race. Under the Kennedy Administration, the Attorney General drafted and the President signed an order barring racial discrimination among those who receive federal contracts. Schaffer was a young associate in a law firm at the time. A client called the law firm and said it had a number of divisions, but only one which did business with the federal government. The client wanted to know whether it had to desegregate all of their divisions, or just that one. Schaffer was assigned to do research on that issue; he came back and told the partner who had given the assignment his conclusion was that they had to desegregate only the one division. In due course, the client called and said, “You haven’t answered my question.” The partner said, “Yes, my young associate here has done the research and as far as we can tell you only have to desegregate the one division.” The client said, “Thank you, very much.” The lawyer said, “Wait a minute, I’m not finished. As a matter of morality, you ought to desegregate them all.”

Schaffer gives this as an example of a controversial practice among lawyers which involves giving the client what has to be formally described as advice in the area of the client’s business judgment. The question about the lawyer in this case is, does the lawyer simply provide the client the information asked for, or does the lawyer go beyond that and give further advice in an area in which the lawyer has no unique competence? The lawyer is no better suited than the client to decide whether, as a matter of morality, these other divisions ought to be desegregated. If the lawyer were saying, “You should do it now because I think they are going to change this law next year, and you’ll be ahead of the curve,” or “You should do it as a matter of prudence because I could be wrong about this memo,” that would be one thing. But that was not what the lawyer was saying. The lawyer was saying, “I am giving you moral advice.”

I often tell that story when I talk to lawyers about ethics. The most frequent response I get is that the moral advice goes beyond the lawyer’s proper role. Not because the lawyer was morally wrong in his advice, no one of course says that, but rather, because it is not that piece of advice for which the client contacted the lawyer in

the first place. That may be a correct description of the client's desires. I am not fully persuaded that it is a correct description of the lawyer's role; or, if it is, it is a description of only technocracy. It is a description that limits the lawyer's role and activities to doing precisely what the client asks. That is a fairly recent view of what lawyers do.

In the nineteenth century, at least in the treatises, the idea of lawyer as officer of the court was taken quite seriously. So much so, the treatise writers of that time would tell you that the lawyer's duty to the client is no higher than third or fourth among the lawyer's many moral obligations—to the nation, to the courts, and to justice. The minimum claim that I want to make, however, is that the lawyer's duty to justice is higher than the lawyer's duty to an individual client. Does that mean the lawyer's obligation is to turn in a client that commits a crime? Quite the contrary, defending a client everybody believes is guilty contributes to justice. Others do not agree with this concept. It is very difficult to persuade most members of the public that defending a client everyone believes is guilty is a contribution to justice.

There was a fascinating public opinion survey ten or fifteen years ago in which the following question was asked: "Do you think that people accused of child sexual abuse should be entitled to the same legal protections as defendants accused of other crimes?" The public overwhelmingly answered, "No!" While about three-fourths of the public answered, "No," about three-fourths of lawyers answered, "Yes." This was part of a survey comparing attitudes on justice between the public and lawyers. The fact that the public says no, does not mean that lawyers are wrong and the fact that lawyers say yes, does not mean that the public is wrong. The different answers are generated in part by the different goals that each group is pursuing. When lawyers, as a profession, stand up en masse with different answers to tough questions like that, they are stating that lawyers have a different point of view that may be radically different from what most people think. This differing point of view is nevertheless generated by our self conception as a profession. I believe that is a correct approach because the profession must believe that it rest on a moral understanding of the world, even when it leads to answers that are radically different from the answer that others might give.

Most people in America are good, kind, thoughtful, and very moral people. Their morality leads them to a particular judgment

about what ought to be done in the world. Professionals should be precisely the same, except that they should give their fealty to a set of moral judgments that will often be different from what most Americans share. I am not here claiming that professional ethics are better or worse, just different, and I hope, morally defensible.

Nothing that I have said should be taken to suggest that when there is a conflict between professionals on the one hand, and the majority of the citizens on the other, that the professionals should always prevail. But as a simple matter of democratic theory, the professions should often prevail. As a simple matter of democratic theory, the autonomy of the professions is important. It is important because only their autonomy, which begins with the attachment to a moral principle, allows the professions to display the radical distinctiveness that is needed in order to act as reliable democratic intermediaries.

We live in a nation in which far too many intermediaries have broken down. Labor unions are less powerful in most of the country than they once were, local fraternal organizations are collapsing, and many churches are losing members. But the professions, if they want to be, can still be strong and radically autonomous as long as they do not become so corrupted by the world that they find the greatest goal is to make money, fill the seats, or to gain an audience. The propounding and the nurturing of that radical autonomy that is the greatest public service the professions can do for America.